

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/26/2019

OFF-WHITE LLC,

Plaintiff,

v.

ALINS, ANTONY ARCHIBALD, CHAIRUIY,
CRAVELOOK, DORYN_LEB, DUOLU,
DWARM, DYMA_STORE, FANXIAOPENG,
HYPEBEAST CO., JIAHU MALL, KEITH
KNOWLES (STORE), KICKSIXSTORE,
KIWBOOD, LANFOO, LANZHX,
LUQUANQUS, MIEDAING, NIS INDUSTRIES,
PAGCOME, QCOVER, RADU'S STORE,
REANYST, REAYOUS, SAKA LAKA,
SAWYUE,
SHENZHENSHIXUESHANHUANBAOKEJIY
OUXIANGONGSI, SUNNIYU, THE
SOPRANOS and ZC OUTDOOR PRODUCTS












Defendants.

19 Civ. 9593 (AT)

**PRELIMINARY
INJUNCTION ORDER**

GLOSSARY

Term	Definition
Plaintiff or Off-White Defendants	Off-White LLC Alins, Antony Archibald, CHAIRUIY, CraveLook, Doryn Leb, DuoLu, Dwarm, Dyma Store, FanXiaoPeng, HypeBeast Co., JIAHU MALL, KEITH KNOWLES (Store), KickSixStore, Kiwbood, Lanfoo, Lanzhx, Luquanqus, Miedaing, NIS Industries, Pagcome, Qcover, Radu's Store, Reanyst, REAYOUS, Saka laka, Sawyue, shenzhenshixueshanhuanbaokejiyouxiangongsi, SUNNIYU, The Sopranos and ZC OUTDOOR PRODUCTS
Amazon	Amazon.com, a Seattle, Washington-based, online marketplace and e-commerce platform owned by Amazon.com, Inc., a Delaware corporation, that allows manufacturers and other third-party merchants, like Defendants, to advertise, distribute, offer for sale, sell and ship their retail products, which, upon information and belief, primarily originate from China, directly to consumers worldwide and specifically to consumers residing in the U.S., including New York
Epstein Drangel	Epstein Drangel LLP, counsel for Plaintiff
New York Address	244 Madison Ave, Suite 411, New York, NY 10016
Complaint	Plaintiff's Complaint filed on October 17, 2019
Application	Plaintiff's <i>Ex Parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined <i>infra</i>) and Defendants' Assets (as defined <i>infra</i>) with the Financial Institutions (as defined <i>infra</i>); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery filed on October 17, 2019
Abloh Dec.	Declaration of Virgil Abloh in Support of Plaintiff's Application
Scully Dec.	Declaration of Brienne Scully in Support of Plaintiff's Application
Off-White Products	A high-end line of men's and women's apparel, as well as shoes, accessories, jewelry, and other ready-made goods, marketed under the Off-White Brand (defined <i>infra</i>)
Off-White Brand	The trademarks, Off-White™ and Off- White c/o Virgil Abloh™, used to market the Off-White Products
Off-White Registrations	U.S. Trademark Registration Nos.: 5,119,602 for "OFF WHITE" for a variety of goods in Class 25 with a constructive date of first use of January 25, 2012, 5,713,397 for "OFF-WHITE" for a variety of goods in

	<p>Class 25, 5,710,328 for “OFF-WHITE C/O VIRGIL ABLOH” for a variety of goods in Class 9, 5,572,836 for “OFF-WHITE C/O VIRGIL ABLOH” for a variety of goods in Class 25, 5, 710,287 for “OFF-WHITE C/O VIRGIL ABLOH” for a variety of goods in Class 14, 5,150,712 for  for a variety of goods in Class 18 and 25, 5, 710,288 for  for a variety of goods in Class 14, 5,307,806 for  for a variety of goods in Class 18 and 25, 5,835,552 for  for a variety of goods in Class 9, 5,387,983 for  for a variety of goods in Class 25, 5,445,222 for  for a variety of goods in Class 25, 5,800,414 for  for a variety of goods in Class 9 and 25, 5,681,805 for  for a variety of goods in Class 9 and 5,663,133 for  for a variety of goods in Class 25</p>
Off-White Applications	<p>U.S. Trademark Serial Application Nos.: 88/080,002 for , for a variety of goods in Class 25 and 88/041,456 for , for a variety of goods in Class 18 and Class 25</p>
Off-White Marks	The marks covered by the Off-White Registrations and the Off-White Applications
Counterfeit Products	Products bearing or used in connection with the Off-White Marks, and/or products in packaging and/or containing labels bearing the Off-White Marks, and/or bearing or used in connection with marks that are confusingly similar to the Off-White Marks and/or products that are identical or confusingly similar to the Off-White Products
Infringing Listings	Defendants’ listings for Counterfeit Products

User Accounts	Any and all websites and any and all accounts with online marketplace platforms such as Amazon, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them
Merchant Storefronts	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them
Defendants' Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)
Defendants' Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)
Financial Institutions	Any banks, financial institutions, credit card companies and payment processing agencies, such as Amazon.com, Inc., Amazon Payments, Inc. ("Amazon Pay"), PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer"), PingPong Global Solutions, Inc. ("PingPong") and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants
Third Party Service Providers	Online platforms, including, without limitation, those owned and operated, directly or indirectly by Amazon, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise

WHEREAS, Plaintiff having moved *ex parte* on October 17, 2019 against Defendants for the following: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts and Defendants' Assets with the Financial Institutions; 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery;

WHEREAS, the Court entered an Order granting Plaintiff's Application on October 18, 2019 which ordered Defendants to appear on October 29, 2019 at 1:00 p.m. to show cause why a preliminary injunction should not issue;

WHEREAS, the Court entered an Order on October 25, 2019, *inter alia*, adjourning the show cause hearing until November 5, 2019 at 1:20 p.m., and extending the TRO until November 5, 2019;

WHEREAS, the Court entered an Order on October 29, 2019, *inter alia*, adjourning the show cause hearing until November 26, 2019 at 2:00 p.m., and extending the TRO until November 26, 2019;

WHEREAS, on October 25, 2019 and October 30, 2019, pursuant to the alternative methods of service authorized by the TRO, Plaintiff served the Summons, Complaint, TRO and all papers filed in support of the Application on each and every Defendant;

WHEREAS, on November 26, 2019 at 2:00 p.m., Plaintiff appeared at the Show Cause Hearing, but no Defendants appeared.

ORDER

1. The injunctive relief previously granted in the TRO shall remain in place through the pendency of this litigation, and issuing this Order is warranted under Federal Rule of Civil Procedure 65 and Section 34 of the Lanham Act.

a) Accordingly, Defendants are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the final hearing and determination of this action or until further order of the Court:

- i. manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products or any other products bearing the Off-White Marks and/or marks that are confusingly similar to, identical to and constitute a counterfeiting and/or infringement of the Off-White Marks;
- ii. directly or indirectly infringing in any manner any of Plaintiff's Off-White Marks;
- iii. using any reproduction, counterfeit, copy or colorable imitation of Plaintiff's Off-White Marks to identify any goods or services not authorized by Plaintiff;
- iv. using any of Plaintiff's Off-White Marks or any other marks that are confusingly similar to the Off-White Marks on or in connection with Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products;
- v. using any false designation of origin or false description, or engaging in any action which is likely to cause confusion, cause mistake and/or to deceive members of the trade and/or the public as to the affiliation, connection or association of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defendants with Plaintiff, and/or as to the origin, sponsorship or approval of

any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defendants and Defendants' commercial activities and Plaintiff;

- vi. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products and/or (ii) any computer files, data, business records, documents or any other records or evidence relating to their User Accounts, Merchant Storefronts or Defendants' Assets and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products;
- vii. effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order; and
- viii. knowingly instructing, aiding or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs 1(a)(i) through 1(a)(vii) above and 1(b)(i) through 1(b)(ii) and 1(c)(i) below.

b) Accordingly, the Third Party Service Providers and Financial Institutions are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the final hearing and determination of this action or until further order of the Court:

- i. secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants' Assets from or to Defendants' Financial Accounts until further ordered by this Court;
 - ii. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to the Defendants' User Accounts, Merchant Storefronts, Defendants' Assets and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products; and
 - iii. knowingly instructing, aiding, or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs 1(a)(i) through 1(a)(vii) and 1(b)(i) through 1(b)(ii) above.
- c) Accordingly, the Third Party Service Providers are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the final hearing and determination of this action or until further order of the Court:
 - i. providing services to Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts insofar as they are connected to the Counterfeit Products;
 - ii. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to the Defendants' User Accounts, Merchant Storefronts, Defendants' Assets and the manufacture,

importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products; and

- iii. knowingly instructing, aiding, or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs 1(a)(i) through 1(a)(vii), 1(b)(i) through 1(b)(ii) and 1(c)(i) through 1(c)(ii) above.

- 2. As sufficient cause has been shown, the asset restraint granted in the TRO shall remain in place through the pendency of this litigation, including that:

- a) within seven (7) days of receipt of notice of this Order, any newly discovered Financial Institutions who are served with this Order shall locate and attach Defendants' Financial Accounts, shall provide written confirmation of such attachment to Plaintiff's counsel and provide Plaintiff's counsel with a summary report containing account details for any and all such accounts, which shall include, at a minimum, identifying information for Defendants and Defendants' User Accounts, contact information for Defendants (including mailing addresses and e-mail addresses), account numbers and account balances for any and all of Defendants' Financial Accounts.

- 3. As sufficient cause has been shown, and pursuant to FRCP 4(f)(3), service may be made on, and shall be deemed effective as to Defendants if it is completed by one of the following means:

- a) delivery of: (i) a PDF copy of this Order or (ii) a link to a secure website (including NutStore, a large mail link created through Rmail.com or via website publication through a specific page dedicated to this Lawsuit accessible through ipcounselorslawsuit.com) where each Defendant will be able to download a PDF copy of this Order, to Defendants' e-mail addresses to be determined after having been

identified by Amazon pursuant to Paragraph V(C) of the TRO.

4. As sufficient cause has been shown, that such alternative service by electronic means ordered in the TRO and herein shall be deemed effective as to Defendants through the pendency of this action.
5. Defendants are hereby given notice that they may be deemed to have actual notice of the terms of this Order and any act by them or anyone of them in violation of this Order may be considered and prosecuted as in contempt of this Court.
6. The \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this Order is terminated.
7. This Order shall remain in effect during the pendency of this action, or until further order of the Court.
8. Any Defendants that are subject to this Order may appear and move to dissolve or modify the Order on two (2) days' notice to Plaintiff or on shorter notice as set by the Court.

SO ORDERED.

SIGNED this 26th day of November, 2019, at 3:00 p.m.
New York, New York



HON. ANALISA TORRES
UNITED STATES DISTRICT JUDGE